

Fall
2015

**MONROE McDONOUGH
BRENT & MORALES, PLLC**
ATTORNEYS AT LAW

MONROE McDONOUGH BRENT & MORALES, PLLC
2500 N. Tucson Blvd., Suite 140 Tucson, Arizona 85716 ♦ 520-292-2500
www.mmbmazlaw.com

SOUTHERN ARIZONA'S REAL ESTATE LAW FIRM

Welcome to the MMB&M Newsletter

Neighbor Disputes.....	page 2
What's Happening in Tucson	page 3
Guest Appearances on Talk Radio.....	page 4
St. Thomas More Society Honors Lawrence McDonough.....	page 5
Recent ADA Litigation: What Owners of Commercial Property Need to Know.....	page 6

MMB&M @ Tucson Association of REALTORS® EXPO 2015



MMB&M, an affiliate of the Tucson Association of REALTORS®, through law partner Heidi Rib Brent, proudly participated in the 2015 EXPO on Thursday, September 24th at the Tucson Convention Center. The theme for this year was “Back to the Movies” for which we displayed a backdrop and DeLorean prop borrowed from our client (and Anne Morales’ brother) Tony Terry of The Gaslight Theatre used in its parody “Back to the Past.” Donning lab coats and the professor’s wig for only moments at a time, the law partners enjoyed the day, mingling with real estate professionals, affiliates and other Expo participants and handing out “SWAG” (stuff we all get), including pens with the firm name and eyeglass and cell phone screen cleaners with the firm logo. Come by the office, get your SWAG and see the law clearly with MMB&M!

Neighbor Disputes

By: Heidi Rib Brent

hbrent@mmbmazlaw.com



Neighbors don't always get along for a variety of reasons, including noise, exchange of debris of various kinds, noxious odors wafting across property lines, obstruction of views, damage to trees, altering water flow, encroachment onto the neighbors' property and outright use of neighbors' property. Some disputes, if not resolved, can quickly escalate to violence and/or litigation. So what steps can be taken to prevent such disputes from escalating to the historic proportions of the Hatfields versus the McCoys?

Some homeowners' associations ("HOA") have dispute resolution procedures, but most only enforce their own Bylaws, Covenants, Conditions and Restrictions ("CC&Rs") and Rules for the benefit of the HOA and refer neighbor disputes to civil courts. The Arizona Department of Fire, Building and Life Safety has dispute resolution processes for disputes between homeowners and their HOA and mobile home residents and their landlords, but not between neighbors themselves.

If the McCoys believe that the Hatfields repeatedly throw nasty debris into the McCoys' yard, blare their radio late at night and shine bright lights into the McCoys' windows, rather than retaliating by such actions as blocking the Hatfield's driveway and cutting down their trees, the McCoys can seek an injunction against harassment. The protective order forms can be obtained online from the Arizona Supreme Court website:

<https://www.azcourts.gov/domesticviolencelaw/Protective-Order-Forms/> In Tucson, the plaintiff has the choice to file in Tucson City Court or Pima County Superior Court.

The injunction against harassment complaint requires at least two instances of acts that are not protected by law. While the McCoys may think the Hatfields harassed them by calling the police about loud music, the act of calling the police for assistance is *not* an act of harassment. Neither is filing a complaint with the HOA or the Hatfields filing for an injunction against harassment against the McCoys. All those are lawful activities for personal protection.

So the McCoys complete the injunction against harassment complaint and go before the judge, requesting their injunction be issued without notice to the Hatfields. They can do this themselves or with counsel. For purposes of the injunction, "harassment" means a series of acts over any period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct, in fact, seriously alarms, annoys or harasses the person and serves no legitimate purpose. ARS §12-1809(s) The judge should verify that there are allegations of at least two acts of harassment by an individual before issuing the injunction, usually directing the Hatfields to stay at least 100 yards away from the McCoys (other than being on their own property) and cease the harassment. Depending on the extent of the harassment, the judge can order the Hatfields not to possess firearms or ammunition and to take domestic violence counseling – all without notice and a hearing! Then the McCoys take

that, along with some physical description to the sheriff or process server to serve the injunction on the Hatfields.

When the Hatfields get served with the injunction, they have up to a year to request a hearing to set aside or modify the injunction and a hearing must be scheduled for them within ten days. At the hearing, the McCoys have the burden of proving that the Hatfields harassed them and that the extent of the injunction is necessary or else the injunction will be quashed (terminated). What frequently happens in these cases is that neighbors seek injunctions against each other. These are treated as two separate actions and heard separately by the court, often by different judges.

If the McCoys do resort to cutting down the Hatfields' trees, damage their driveway or other property destruction and threats of violence, then it becomes a criminal matter, for which the Hatfields should call the police. In addition, the Hatfields can file a civil lawsuit for assault, battery and trespass, seeking damages and an injunction to prevent future such actions. This will require evidence of the actions, along with estimates or receipts for repairs. This can get expensive and become time-consuming. Rather than return at the end of the day to the peacefulness of home, it feels like returning to the battleground.

If the McCoys continue to be so difficult, the only resolution may be the Hatfields selling their house and moving. However, if the McCoys are really that difficult, particularly if it has risen to litigation, it may be a matter that the Hatfields need to disclose on the seller property disclosure statement.

In any case, if peace among neighbors is important to a home buyer, it may be something worth investigating during the due diligence period. Check online as to the neighbors' litigation, inquire about HOA complaints and knock on the doors to say hello. You don't need to be looking for your next best friend, but someone who will not be the source of aggravation for years to come!



What's Happening in Tucson?

Henry Porter & The Sorcerer's Secret - Gaslight Theater - Through November 8, 2015

Stanley Kubrick's The Shining - The Fox Theatre - October 31

Dia de los Muertos Celebration - Tucson Museum of Art - November 1

Tucson Comic Con - Tucson Convention Center - November 7 & 8

El Tour de Tucson - Throughout Tucson - November 21

Last Comic Standing Tour 2015 - The Fox Theatre - November 22

Holiday Arts & Crafts Fair - Reid Park - November 28 & 29

Guest Appearances on Talk Radio



Heidi Rib Brent has made guest appearances on a new radio show “Mi Casa Es Su Casa” with Mark Bishop on KVOI radio AM 1030 on Saturday mornings. Heidi appeared on September 12th, focusing on neighbor disputes, and on October 3rd, focusing on disclosure for sales of residences. For podcasts of the shows, go to <http://www.markbishopshow.com/podcasts/>

For September 12th, Heidi’s segment begins at approximately 37:30 for ten minutes. Other guests included Joseph Barrios, a representative from Tucson Electric Power, discussing their residential solar power program; as well as Jeff Murtaugh, President and CEO of Realty Executives, Inc., discussing the market for residential sales; Derrick Polder of Summit Funding, discussing changes in FHA guidelines; and an interview of Chef Rick Tarin of the Rincon Mountain Grill. For October 3rd, Heidi’s segment begins at approximately 37:00. Heidi’s next appearance is scheduled for November 7th at approximately 10:40 a.m. Listen live or to the podcasts and call in at (520) 790-2040.

When	Where
Friday, October 23, 2015 8:30 am shotgun start	OMNI Tucson National Golf Resort & Spa 2727 North Club Drive

**Come see us on the Green!!
Friday, October 23, 2015**



**OMNI Tucson National Golf Resort & Spa
2727 N. Club Drive, Tucson AZ**

**MONROE McDONOUGH
BRENT & MORALES, PLLC**
ATTORNEYS AT LAW

Southern Arizona’s Real Estate Law Firm

Phone: (520) 292-2500
www.mmbmazlaw.com

The St. Thomas More Society Honors Lawrence McDonough

We are proud to announce that our law partner Lawrence (“Larry”) McDonough has been named as the Attorney Honoree for the 2015 Red Mass by the St. Thomas More Society of Southern Arizona. The Red Mass was held on Tuesday, October 6, 2015 at St. Augustine Cathedral, 192 S. Stone Avenue in downtown Tucson. Historically, the Red Mass originated in England and was offered as an opportunity to bless, strengthen and guide the members of our legal community in their efforts to achieve justice and freedom for society. The color red is associated with the Holy Spirit which is often represented in early imagery as fire. Scarlet red robes were worn by high priests as well as presiding judges while performing their duties, which also relate the Mass to the Bench and Bar.

Each year, the St. Thomas More Society honors a judge, attorney, legal student or public official who exemplifies the sacrifice and principles of St. Thomas More, the patron saint of lawyers. Its primary purpose is to promote the virtues of commitment to church, scholarship, integrity and courage. Larry certainly shines as an example of such character with almost 30 years as pro-bono counsel for Salpointe Catholic High School in addition to volunteer work for the Diocese of Tucson and chairing the Finance Council for St. Thomas the Apostle Catholic Church.



Since Larry moved his family to Tucson from Kansas in 1978, he has dedicated many volunteer hours to our local community, including serving on the Board of Directors for the Tucson Symphony Society, the Southern Arizona Division of the American Heart Association and the United Way of Tucson. He was a member of the Arizona Supreme Court’s Committee on Character and Fitness for seven years, as well as sitting for several years on the Pima County Bar Association’s Board of Directors in different capacities. Larry remains an active volunteer, while dividing his time assisting his grandson’s swim team and supporting his wife’s many creative pursuits.

This is a truly exceptional honor for our firm since last year, another law partner, Anne Terry Morales, was named the Attorney Honoree for the 2014 Red Mass. Along with Anne and Larry, the entire staff at Monroe McDonough Brent & Morales is committed to serving our local community.

RECENT ADA LITIGATION: WHAT OWNERS OF COMMERCIAL PROPERTIES NEED TO KNOW

BY: ANNE TERRY MORALES
amorales@mmbmazlaw.com



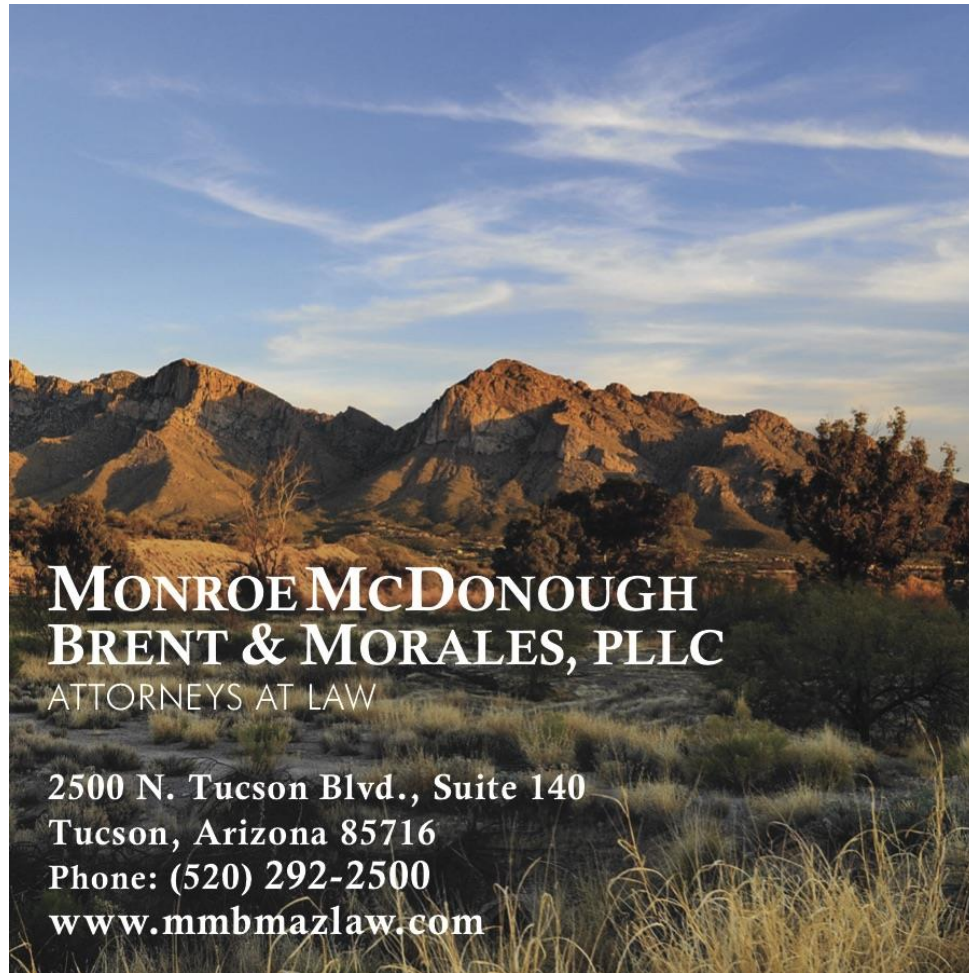
Owners of existing commercial property should take note of the recent proliferation of litigation against business owners for alleged noncompliance with the requirements of the Americans with Disabilities Act (the “ADA”). Passed by Congress in 1990, the ADA is designed to protect Americans with disabilities against discrimination and to assure access to and enjoyment of places of “public accommodation.” The definition of “public accommodation” under the ADA is very broad and includes virtually all businesses of any type that are open to the public. Under the ADA, places of public accommodation are required to be fully accessible to, and independently usable by, individuals with disabilities.

In addition, the Department of Justice adopted new ADA regulations, effective March 15, 2012. The regulations included the “2010 Standards of Accessible Design” which for the first time included specific accessibility requirements for a number of recreational facilities, including swimming pools. (www.ada.gov/qa_existingpools_titleIII.htm.)

Since June of 2015 at least 117 lawsuits have been filed against many hotel owners in Arizona in connection with their swimming pools. The defendants range from small mom and pop operations to large national chains. The suits all were filed by a single Phoenix lawyer representing a woman resident from Pinal County with ambulatory disabilities claiming that the hotels violated the ADA because their swimming pools do not have fixed pool lifts and therefore are not “fully accessible to, and independently usable by, the plaintiff and other persons with disabilities.” The remedies sought in one of the complaints include declaratory and injunctive relief, closure of the hotel until a lift is installed, payment of attorneys’ fees of \$7,250, reimbursement of court costs and compensation for damages suffered by the plaintiff in the amount of \$5,000. No matter what the outcome of each of the lawsuits, each defendant is going to incur substantial costs – i.e. the cost of either settling or defending the lawsuit and the cost of installation of a lift that complies with the ADA.

Similar lawsuits are being filed throughout the country. A national advocacy group for persons with disabilities, Access Advocates, is using Facebook to actively recruit attorneys to join them to sue the owners of buildings that they believe are in violation of ADA standards. According to their web page “Access Advocates is on track to take on 1,000 cases per year within the next three years.” (www.accessadvocates.com/litigating-attorneys-needed/#.) While increasing accessibility for persons with disabilities is definitely commendable– doing so through litigation is inefficient and unnecessarily costly for the business owners involved.

So what should you do as the owner, lessor, lessee or operator of a place of “public accommodation” in light of these lawsuits? First and foremost, *be proactive*. Review your facility for compliance with the ADA. A good place to start your review is the “ADA Checklist for Existing Facilities” found at adachecklist.org or the ADA National Network at 1-800-949-4232. In almost every case it will be less expensive for you to pay for any necessary renovation than to pay the cost of dealing with a lawsuit.



The articles contained in this newsletter are of a general nature and reflect only the opinion of the author at the time it was drafted. They are not intended as definitive legal advice, and you should not act upon it without seeking independent legal counsel.
